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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,294	03/01/2004	Mark S. Gasaway	HO-P02925US0	9348

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EXAMINER

GARCIA, ERNESTO

ART UNIT	PAPER NUMBER
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3679

DATE MAILED: 09/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/790,294	Applicant(s) GASAWAY ET AL.	
	Examiner Ernesto Garcia	Art Unit 3679	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) 4,5,9,14,23,24,33, and 34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,6-8,10,12,13,15-22,25-32 and 35-49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Election of Species

This application contains claims directed to the following patentably distinct species of the claimed invention:

- | | |
|------------------------|-------------------------|
| I. Figures 1A-3C and 6 | II. Figures 4A and 4B |
| III. Figure C | IV. Figures 5 and 7A-7D |
| V. Figure 8 | |

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1 and 19 appear generic although a post only has one cylindrical surface.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

During a telephone conversation with Mr. David L. Fox on September 9, 2005 a provisional election was made without traverse to prosecute the invention of Species I, claims 1-3, 6-8, 10-13, 15-22, 25-32, and 35-49. Applicant in replying to this Office action must make affirmation of this election. Claims 4, 5, 9, 14, 23, 24, 33 and 34 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Regarding the withdrawal of claims 4, 5, 23, and 24, these claims do not read on the elected species.

Regarding the withdrawal of claims 9, 14, 33, and 34, the elected species does not have a sealant along an edge of the opening (claims 9 and 33) or a sealant along an edge of the tab-slots (claims 14 and 34)

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "420" has been used to designate both a member with one configuration of tabs (Figs. 4A and 4B), and another member with a second configuration of tabs (Fig. 4C).

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "410" has been used to designate both a post with tab-slots of one configuration (Figures 4A, 4B) and another post with tab-slots of another configuration (Fig. 4C).

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "480" has been used to designate both tabs of one configuration (Figs. 4A, 4B) and tabs of another configuration (Fig. 4C).

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "460" has been used to designate both tab-slots of one configuration (Figs. 4A, 4B) and tab-slots of another configuration (Fig. 4C).

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "490" has been used to designate both a screw (Figure 4A) and a pin (Figure 4B).

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "450" and "460" in Figure 4A and 4B have both been used to designate the same tab-slot.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "470" and "480" in Figure 4A and 4B have both been used to designate the same tab.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "400" and "410" in Figure 4A and 4B have both been used to designate the same tab-slot.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "430" and "440" in Figure 4A and 4B have both been used to designate the same opening.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "402" and "412" in Figure 4A and 4B have both been used to designate the same stabilizing surface.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "405" and "415" in Figure 4A and 4B have both been used to designate the same securing surface.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the member being solid and partially filled (claims 6 and 37), the post being solid or partially filled (claims 7 and 38), the member coupled to itself (claim 15), and the manner of crimping, gluing, and welding (claim 16) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "360" and "390" have both been used to designate tab-slots (Figure 3C).

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "360" has been used to designate both a tab-slot of one configuration (Figure 3A, 3B), and tab-slots of another configuration (Figure 3C).

The drawings are objected to because Figures 7A-7D also do not comply with 37 CFR 1.84(p)(4) similar to Figures 4a-4c.

The drawings are objected to because the recess are not shown clearly in Figure 3C. Further, Figure 3c is out of proportion. If the recess is as reference by character "360" where is the recess relative to the thin-walled tube. Shouldn't the tabs 360 shown in Figure 3A be aligned horizontally to the edge of the tube as compared to Figure 3B?

If not, applicants need to identify the member 320 and the tube as another species as the post and the member are not the same parts. See 37 CFR 1.121(d)

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes", "The present invention is directed to", etc.

The disclosure is objected to because of the following informalities: the use of the terms "stabilizing surface" or "securing surface" in the disclosure describing that the cylindrical surface of the post has these two surfaces is inconsistent with common ordinary definition of a cylinder. Since the cylindrical post shown in the elected figures only has a cylindrical surface, no two surfaces can exist in the cylindrical surface. Applicant should reconsider rephrasing the term surface with surface portion as surface portions can exist in the cylindrical surface of the post. Appropriate correction is required.

Claim Objections

Claims 10, 11, 13, 15, 35, 36, 44, and 46 are objected to because of the following informalities:

regarding claims 10 and 11, --the-- needs to be inserted after "opposite";

regarding claims 13 and 44, "tab-slots" in line 1 should be --at least one tab-slot--
, and "tabs" in line 2 should be --at least one tab--;

regarding claim 15, "said" in line 1 should be deleted;

regarding claim 35, "tabs" in lines 1 and 2 should be --at least one tab--, and
"are" in line 2 should be --is--;

regarding claim 36, "having component parts" in line 1 should be deleted as the
component parts are those recited in the body of the claim; and,

regarding claim 46, this claim does not further limit the construction as further
elements have not been recited or the subject matter further limits the recited features
of the construction. Appropriate correction is required. For purposes of examining the
instant invention, the examiner has assumed these corrections have been made.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly
claiming the subject matter which the applicant regards as his invention.

Claims 2-3, 6-7, 12, 15, 21, 22, 25, 26, 31, 32, 42, and 49 are rejected under 35
U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and
distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 2 and 21, the limitation "at least one" in lines 2 and 3 of claim 1
makes unclear how many stabilizing surfaces exist in a cylindrical post. As far as

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common knowledge is concerned, a cylindrical surface is just one surface and not more than one. One element cannot be recited as two different elements.

Regarding claim 3, the claim depends from claim 2 and therefore is indefinite.

Regarding claims 6, and 7, the use of the term "may be" in line 1 makes unclear whether the member is required to be solid, hollow, or partially filled.

Regarding claim 15, the limitation "the [[said]] member is coupled to itself at said opening" makes unclear how or what feature of the member couples to the member (itself). Shouldn't the member be coupled to the post instead of itself?

Regarding claim 22, the claim depends from claim 21 and therefore is indefinite.

Regarding claims 25 and 26, the features of "solid, hollow, or partially filled" are non-equivalent alternatives. This claims seems to encompass every possibility. So, how does it further limit claim 19?

Regarding claim 31, the limitation "without" makes the claim unclear since no "additional" fastening is required to have engagement. Further, the limitation "welding" appears to be a narrow limitation within a broad limitation, the "additional fastening". Further still, as presently set forth it appears that "primary" fastening is permitted as long

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as that fastening isn't welding, and the "no additional fastening" merely pertains to no fastening in addition to the primary fastening. Accordingly, it appears that the negative limitation as presented does not properly convey what applicants apparently intended.

Regarding claim 32, the Markush-type claiming is improper as the different methods of engagement recited in claim 32 are not recognized art equivalents. See MPEP 2173.05(h).

Regarding claims 12, 42, and 49, the metes and bounds of the claim is unclear. The claims tend to recite inherent properties of the member inside the opening, but fail to recite the degree of friction and grip. Further, is the level of friction considered a friction fit or other types.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 2, 3, 7, 19-22, 25-32, and 35-49 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 and 6-23 of copending Application No. 10/790,532. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art that the "fence brace assembly" in the pending application '532 is constituted by "a joint connection" of the instant invention.

Claims 6, 8, 10-13, and 15-18 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 and 6-23 of copending Application No. 10/790,532. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art that the metal tubing is a hollow member. Further, the presence of the additional components in application '532 is not precluded by the instant claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 6-8, 10, 13, 15, 16, 18-22, 25, 26, 30-32, 36-40, 43, and 45-47 are rejected under 35 U.S.C. 102(b) as being anticipated by Harmon, 2,113,403.

Regarding claim 1, Harmon discloses, in Figures 2 and 3, a joint connection comprising at least one stabilizing surface **21**, at least one securing surface **22**, and at least one member **26**. The stabilizing surface **21** comprises at least one opening **27**. The securing surface **22** comprises at least one tab-slot **30**. The member **26** comprises at least one tab **29**. The member **26** passes through the opening **27** and the tab **29** engages the tab-slot **30**.

Regarding claim 2, the stabilizing surface **21** and the securing surface **22** are in a common surface (the cylindrical surface).

Regarding claim 3, the stabilizing surface **21** and the securing surface **22** are in the outer surface of a post **25**.

Regarding claims 6 and 37, the member **26** may be solid, hollow, or partially filled.

Regarding claims 7 and 38, the post **25** may be solid, hollow, or partially filled.

Regarding claims 8 and 39, the opening **27** corresponds in shape and size to the member **26**.

Regarding claims 10, 40, and 47, the opening **27** is located directly opposite the tab-slot **30**. The longitudinal axis of the member **26** is oriented at an angle of about 90 degrees relative to the stabilizing surface **21**.

Regarding claims 13 and 43, the size and shape of the tab-slot **30** correspond to the tab **29**.

Regarding claim 15 the member **26** is coupled to the opening **27**.

Regarding claim 16, the tab **29** is engaged with the tab-slot **30** in a manner selected from the group consisting of bending, crimping, gluing, welding, pinning, screwing, twisting, bolting, and via a notch in the tab **29**.

Regarding claim 18, applicants should note that the method of forming the tab-slot by laser cutting is not germane to the issue of patentability of the device itself and only the presence of a tab-slot need be shown. Therefore, this limitation has been given limited patentable weight since Harmon has been shown to possess a tab-slot **30**. See MPEP ' 2113.

Regarding claim 19, Harmon discloses the method comprises:

- providing at least one stabilizing surface, comprising at least one opening;
- providing at least one securing surface, comprising at least one tab-slot;
- providing at least one member, comprising at least one tab;
- passing said member through said opening; and,
- passing said tab into said tab-slot.

Regarding claims 20-22, 25, 26, and 30-32, at the outset, it should be noted that in method claims, it is the patentability of the method steps that is to be determined and not the recited structure. Structure not affected in the manipulative sense is given no patentable weight. Claims 20-22, 25, 26, and 30-32 do not recite any method steps and, as such, do not further limit the method. Nevertheless, the joint connection of Harmon possesses the opening corresponding to the shape and size of the member (claim 20); the stabilizing surface and the securing surface are in a common surface (claim 21); the stabilizing surface and the securing surface are in the outer surface of a post (claim 22); the member may be solid, hollow, or partially filled (claim 25); the post

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may be solid, hollow, or partially filled (claim 26); the opening is located directly opposite at least one tab-slot, so that when assembled, the longitudinal axis of the member is oriented at an angle of about 90 degrees relative to the stabilizing surface (claim 27); the size and shape of the tab-slots correspond to the tabs (claim 30); the tab engage in the corresponding tab-slot without requiring welding or additional fastening (claim 31; applicants should note that Harmon uses the term "may" in column 2, line 41 to indicate that the tab may be fused); and, the tab is engaged with the tab-slot in a manner selected from the group consisting of bending, crimping, gluing, welding, pinning, screwing, twisting, bolting, and via a notch in the tab (claim 32).

Regarding claim 36, Harmon discloses, in Figure 3, a joint kit comprising at least one post **25** and at least one member **26**. The post **25** comprises at least one stabilizing surface **21** having at least one opening **27**, and at least one securing surface **22** having at least one tab-slot **30**. The member **26** comprises at least one tab **29**.

Regarding claim 45, Harmon discloses a construction comprising at least one post **25** and at least one member **26**. The post **25** comprising at least one opening **27** and at least one tab-slot **30**. The member **26** comprises at least one tab **29**. The member **26** passes through the opening **27** and the tab **29** engages the tab-slot **30**.

Regarding claim 46, the construction is at least selected from the fences, gates ladders, scaffolding, or walls.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11, 12, 28, 41, 42, 48, and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harmon, 2,113,403, in view of Barenyi, 2,701,726.

Regarding claims 11, 28, 41, and 48, Harmon, as discussed above, discloses the opening **27** not directly opposite the tab-slot **30**. However, Harmon fails to disclose the opening **27** offset from the tab-slot **30** so that the longitudinal axis of the member **26** is oriented at a non-90 degree angle relative to the stabilizing surface **21**. It has been consistently held that rearranging parts of an invention involves only routine skill on the part of one of ordinary skill in the art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to rearrange the tab-slot **30** offset relative to the opening **27** to angle the member **26** relative to the stabilizing surface **21** in order to make a frame member hexagonal to limit in a most suitable way the whole interior space of a vehicle body (col. 2, lines 23-27) by positioning the member C1 at non-90 degree angle relative to a stabilizing surface as taught by Barenyi (see Fig. 4). See *In re Japikse*, 86 USPQ 70.

Regarding claims 12, 42, and 49, Harmon as modified above, the angle results in some degree of friction and grip between the member **26** and the opening **27**. Thus, friction and grip exist between the member and the opening. Applicant should note that even gravity on the member tends to provide friction and grip in the opening.

Claims 17, 35, and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harmon, 2,113,403, as applied to claims 1-3, 6-8, 10, 13, 15, 16, 18-22, 25, 26, 30-32, 36-40, 43, and 45-47 above, and further in view of Clark, 3,061,338.

Regarding claims 17 and 44, Harmon, as discussed, fails to disclose at least one recess in the securing surface **22**. Clark teaches in Figure 1, a recess 27 in a securing surface 16 to make flush a bent tab 25 with the securing surface 16. Therefore, as taught by Clark, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a recess in the securing surface **22** of Harmon to make flush the tab with the securing surface **22** so that one handling the post and the member does not accidentally get scratched versus a tab that projects beyond the post.

Regarding claim 35, Harmon, as discussed above, fails to disclose the step of bending the tab **29** over an edge of the tab-slot **30** into a recess in the securing surface **22**. Clark teaches, in Figure 1, bending a tab 25 over an edge of a tab-slot 27 in a securing surface 16 to make flush the tab 25 with the securing surface 16. Therefore,

as taught by Clark, it would have been obvious to one of ordinary skill in the art at the time the invention was made to bend the tab **29** over an edge of the tab-slot **30** in the securing surface **22** to make flush the tab **29** with the securing surface **22** so that one handling the post and the member does not accidentally get scratched versus a tab that projects beyond the post.

Conclusion

The following prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sweeney et al., 823,451, show a similar joint connection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernesto Garcia whose telephone number is 571-272-7083. The examiner can normally be reached from 9:30-5:30. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached at 571-272-7087.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

E.G.

E.G.

September 16, 2005

A handwritten signature in black ink that reads "Daniel P. Stodola". The signature is written in a cursive, flowing style.

DANIEL P. STODOLA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600